S.B. Civil Misc. Appeal No.990/2006

Mastan Singh.
vs.
Madan Gopal and another.

Date : 25.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. RS Gill, for the appellant.

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Heard learned counsel for the appellant finally on the appeal itself in view of the fact that learned counsel for the appellant submits that by order dated 10.7.2006, his right to submit application under Order 38 Rule 5 CPC may not be affected and, therefore, this appeal has been filed.

It appears that the trial court dismissed the injunction application of the appellant after taking note of the fact that for relief claimed by the appellant in the suit, proper remedy was available under Order 38 Rule 5 CPC wherein the appellant could have sought relief of attachment before judgment in case any cause accrued to the appellant.

In view of the above, this appeal, having no force, is dismissed with liberty to the appellant to file application under Order 38 Rule 5 CPC.

It is also observed that the appellant otherwise also

had a right to submit application under Order 38 Rule 5 CPC because the scope under Order 39 Rules 1 and 2 CPC is entirely different than the scope of Order 38 Rule 5 CPC.

(PRAKASH TATIA), J.

S.Phophaliya